IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 75 OF 1999

IN

ARBITRATION PETITION NO. 341 OF 1998

M/s Nirfabrics Ltd. (in Liquidation) through the Official Liquidator, having his office at Bank of India Building, 5th Floor, M.G. Road, Fort, Mumbai-400 023. .. Appellant

V/s

Nirlon Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at Pahadi Village, Goregaon (E), Mumbai-400 063. .. Respondent

Mr.Debashish Mitra for the appellant.

Mr.Firoz Palkhiwala with Ms.Samindra Surve i/b Little & Co. for the respondent.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 20TH JUNE 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. This appeal is directed against the judgment dated 13th October 1998 passed by a learned single Judge of this court dismissing Arbitration Petition No.341 of 1998 filed by the appellant under section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act").

2. Disputes between the appellant and the respondent were referred to arbitration. By an award dated 6th July 1998, the learned sole arbitrator held that the respondent was entitled to recover from the petitioner a sum of Rs.3,47,34,332/- together with interest thereon at the rate of 10% per annum from 1st March 1996 till payment or realisation. The petitioner challenged the award of the learned arbitrator by filing Arbitration Petition No.341 of 1998. The main ground of challenge before the learned single Judge was that the respondent company was notified as a relief undertaking under section 3 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (for short "the BRU Act") and, therefore, the arbitration proceedings could not be proceeded with and consequently the award passed in favour of the respondent while the declaration of the respondent as a relief undertaking under the BRU Act was in force was without jurisdiction and contrary to the provisions of section 4 of the BRU Act. In the alternative, it was argued that the award passed by the learned arbitrator could not be executed while the respondent continued to be a relief undertaking under the BRU Act.

3. During the pendency of the appeal, an order for winding up of the appellant company was passed and the

appeal was therefore pursued by the Official Liquidator.

4. The respondent was first notified as a relief undertaking by the State of Maharashtra by a notification dated 21st July 1987 under section 3 of the BRU Act. On expiry of the initial notification, fresh notifications were issued from time to time extending the initial notification under section 3 of the BRU Act. In the meanwhile, the dispute between the appellant and the respondent was referred to arbitration in March 1996 and an award was declared on 6th July 1998. On the date of award, the notification issued under section 3 of the BRU Act had expired by efflux of time. However, a fresh notification was published on 11th August 1998 and we are informed at the bar that thereafter successive notifications have been issued and the respondent continues to be a relief undertaking under the BRU Act.

5. Learned counsel for the appellant submitted that section 4 of the BRU Act provides that any undertaking, which is declared as a relief undertaking under a notification issued under section 3 of the BRU Act, cannot enforce any rights, privileges or obligations against any other person and, therefore, the respondent was not entitled to continue the arbitration proceedings while the notification was in force and, in any event, cannot execute the award so long as the notification is

in force. In order to appreciate the contention of the appellant, it is necessary to reproduce section 4 of the BRU Act which reads as under:

> "**4. Power to prescribe industrial relations and other facilities temporarily for relief undertaking**.- (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that-
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> (a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of section 3-
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> (i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply and such relief undertaking shall be exempt therefrom or shall, if so directed by the State Government, be applied with such modifications which do not however affect the policy of the said laws as may be specified in the notifications;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or financial assistance was provided to it by, or with the approval of the State Government, for being run as a relief undertaking, shall be suspended in operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with clauses (i) and (ii) and the notifications;

(iv) any right, privilege, obligation and liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed;

(b) the right, privilege, obligation and liability referred to in clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued;

Provided that, in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force."

6. The BRU Act, as its preamble shows, was enacted as a temporary measure inter alia to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. If an industrial undertaking becomes sick and is likely to be closed down on account of sickness, there is a likelihood of persons employed by the undertaking becoming unemployed. The BRU Act was enacted in order to grant relief to such persons to see that they do not become unemployed. It empowers the State Government to notify an undertaking under section 3 of the BRU Act as

a relief undertaking. The effect of such notification is to suspend all proceedings relating to enforcement of any rights, privileges, obligations against the relief undertaking or liability accrued or incurred by the relief undertaking. Sub-clause (iv) of clause (a) of sub-section (1) of section 4 provides that in relation to any relief undertaking, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed. Plain reading of sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the BRU Act shows that proceedings against a relief undertaking would be stayed. This is interpretation in consonance with the purposive interpretation, namely that the relief should be granted to a relief undertaking by suspending the proceedings pending against it. The object of the aforesaid sub-clause (iv) is not to prevent the relief undertaking from enforcing its rights and privileges against a third person. Such construction would defeat the very purpose of the BRU Act. Section 4 of the BRU Act is enacted to give protection to the relief undertaking and not to curtail its rights of recovery of loan or money or enforcement of its rights against strangers. If sub-clause (iv) is to be interpreted in

the manner suggested by the learned counsel for the appellant, the relief undertaking instead of coming out of sickness would become more weak. It would not be able to enforce its rights and privileges or be able to recover its dues leading to more sickness. We, therefore, are unable to accept the contentions of the learned counsel for the appellant that sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the BRU Act prevents the relief undertaking from enforcing any rights or privileges against a third person. In the circumstances, we are of the opinion that the respondent was not precluded from pursuing the arbitration proceedings merely because it was declared as a relief undertaking under section 3 of the BRU Act. Similarly, it is not precluded from enforcing or executing the award even during the period during which it continues to be a relief undertaking.

7. No other point was urged before us.

8. In the circumstances, we do not find any merit in the appeal, which is hereby dismissed with costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)